

Table of Contents.

Opinion below	1
Jurisdiction	1
The statute involved	2
Questions presented	2
Statement of the case	3
Summary of argument	4
Argument	5
I. Background of the statute and of this case	5
II. Permissible basis of a State's investigation of subversive activities	6
The nexus between DeGregory and the investiga- tion	13
Investigation of the past	14
Conclusion	15
Appendix	16

Table of Authorities Cited.

CASES.

American Committee for Protection of Foreign Born v. Subversive Activities Control Board, 380 U.S. 503	10, 14
Barenblatt v. United States, 360 U.S. 109	12
Bates v. Little Rock, 361 U.S. 516	13
Braden v. United States, 365 U.S. 431	12
Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1	14
Gibson v. Florida Legislative Investigating Commit- tee, 372 U.S. 539	11
Jordan v. Hutcheson, 323 F. 2d 597	7
Mapp v. Ohio, 367 U.S. 643	7
N.A.A.C.P. v. Button, 371 U.S. 415	13

Nelson v. Wyman, 99 N.H. 33	14
Pennsylvania v. Nelson, 350 U.S. 497	11, 12
Sweezy v. New Hampshire, 354 U.S. 234	5, 7
United States v. Rumely, 345 U.S. 41	7
Uphaus v. Wyman, 360 U.S. 72	5, 7, 9, 10, 11, 12
Veterans of the Abraham Lincoln Brigade v. Sub- versive Activities Control Board, 380 U.S. 513	10, 14
Watkins v. United States, 354 U.S. 178	7, 8
Wilkinson v. United States, 365 U.S. 399	12
Wyman v. DeGregory, 101 N.H. 171; appeal dis- missed, DeGregory v. Wyman, 360 U.S. 717	6, 10
Wyman v. DeGregory, 103 N.H. 214; aff'd per cu- riam, DeGregory v. Attorney General of New Hampshire, 368 U.S. 19	6, 10

STATUTES.

Constitution of the United States	
First Amendment	3, 4, 6, 8, 13, 14
Fourth Amendment	3, 4, 6, 14
Fourteenth Amendment	3, 4, 6
28 U.S. Code, § 1257 (2)	2
New Hampshire Laws of 1953, c. 307	5
New Hampshire Laws of 1955, c. 197	5
New Hampshire Laws of 1957, c. 178	5
106 New Hampshire Rep. 262; 209 A. 2d 712	1
New Hampshire Revised Statutes Annotated (R.S.A.)	
C. 491, §§ 19, 20	4
C. 588, § 8-a	2, 3, 5, 7, 8, 9

Supreme Court of the United States.

OCTOBER TERM, 1965.

No. 396.

HUGO DEGREGORY,
Appellant,

v.

ATTORNEY GENERAL OF THE STATE OF
NEW HAMPSHIRE,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW HAMPSHIRE.

BRIEF FOR APPELLANT.

Opinion Below.

The opinion of the New Hampshire Supreme Court (R. 34-39) is reported in 106 New Hampshire Rep. 262; 209 A. 2d 712.

Jurisdiction.

The judgment of the Supreme Court of New Hampshire was rendered on April 30, 1965. Notice of appeal to the Supreme Court of the United States was filed on May 28, 1965. Appellant's jurisdictional statement was filed on July 27, 1965. On October 18, 1965, this Court noted

probable jurisdiction. The jurisdiction of this Court rests on 28 U.S. Code, § 1257 (2).

The Statute Involved.

New Hampshire Revised Statutes Annotated, c. 588, § 8-a, provides as follows:

“ATTORNEY GENERAL. At any time when the attorney general has information which he deems reasonable or reliable relating to violations of the provisions of this chapter he shall make full and complete investigation thereof and shall report to the general court the results of this investigation, together with his recommendations, if any, for legislation. In any investigation hereunder the attorney general or any duly authorized member of his staff is authorized to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers and documents and to administer such oaths, and to take such testimony and to make such expenditures within the funds provided as he deems advisable. The provisions of section 7 of this chapter shall be inapplicable to the investigation provided for herein and the attorney general is hereby authorized to make public such information received by him, testimony given before him, and matters handled by him as he deems fit to effectuate the purposes hereof.”

Other pertinent statutes appear in the appendix.

Questions Presented.

Whether New Hampshire Revised Statutes Annotated, c. 588, § 8-a, as applied by the New Hampshire Court on

the record of this case, violates due process of law under the Fourteenth Amendment to the United States Constitution, and whether it violates appellant's rights under the First and Fourth Amendments of the United States Constitution as applied to the states by the Fourteenth Amendment.

Statement of the Case.

In November of 1963 appellee Attorney General, purporting to act under N.H. R.S.A. c. 588, § 8-a, caused a subpoena to be served on appellant, ordering him to appear for questioning on November 22, 1963. On that day the Attorney General started to question DeGregory, and asked: "Have you ever been a member of the Communist Party?" (R. 27). Objection was made, and a lengthy colloquy of counsel ensued, during which appellee purported to offer a justification for the questioning. Eventually, DeGregory replied as follows:

"I would like to state, Mr. Gall, that I am not now a member of the Communist Party and have not been at any time since the authority you have cited, RSA 588:8-a: that I have no knowledge of any Communist activities in New Hampshire during this period or of any violations of RSA 588 during this period of six and one-half years. In fact, I am not even aware of the existence of a Communist Party in the state of New Hampshire at any time the authority you have cited, Section 8-a, has been on the statute books, and in view of the foregoing I do not understand what I have to face here today."

Appellee continued to ask questions, most of which DeGregory refused to answer, after inquiring as to what pe-

ried the questions related and being told that they related to "any time" (R. 31-34).

Thereafter, appellee filed a petition in the Supreme Court for Merrimack County, New Hampshire, under the provisions of R.S.A. 491, §§ 19 and 20, praying that DeGregory be held in contempt for failure to answer relevant questions (R. 2-4). Appellee duly filed an answer, asserting his constitutional objections to the proceeding (R. 4, 5).

A court hearing was held on May 20, 1964, at which the Superior Court ruled that, on the basis of State's Exhibit 1 (1955 Report of the Attorney General), appellee was entitled to question DeGregory (R. 14), even though DeGregory repeated the statement under oath he had made at the previous hearing (R. 15). Finally the Court ordered DeGregory committed for contempt for one year or until he was purged, and released him on his own recognizance pending appeal (R. 22).

On a reserved case, in which all questions of law raised at the proceedings were reserved and transferred (R. 2), the Supreme Court of New Hampshire affirmed the decision of the lower Court (R. 34-39).

Thereafter this appeal was taken.

Summary of Argument.

Appellant DeGregory, by the decisions of the New Hampshire Courts, has been deprived of due process of law and of his First and Fourth Amendment rights as applied to the states by the Fourteenth Amendment.

Because of the broad area of federal pre-emption, a State investigation of subversive activities can only be constitutionally carried on where the State can show that its legitimate and vital interests warrant the overriding of the protected rights of the individual. The New Hampshire

Courts' construction of the investigating statute (R.S.A. c. 588, § 8-a), as applied in the circumstances of the case, permits the State investigating power to proceed beyond its constitutional limitations.

If it be established that an investigation is valid, it is still the duty of the investigating authority to furnish a basis of probable cause to show that the summoning of a particular witness can be expected to furnish information in furtherance of the investigation. Appellee in the instant case has failed to furnish such probable cause. The New Hampshire Courts, in failing to require of appellee that he establish such probable cause, have infringed the rights of appellant under the United States Constitution.

Argument.

I.

BACKGROUND OF THE STATUTE AND OF THIS CASE.

The New Hampshire Subversive Activities Act (R.S.A. c. 588) was passed in 1951. In 1953 the General Court passed an Act authorizing the Attorney General, as a one-man legislative committee, to investigate in this field (Laws of 1953, c. 307). This authority was continued until 1957, when the present statute was passed (Laws of 1955, c. 197; R.S.A. c. 588, § 8-a, as inserted by Laws of 1957, c. 178) (R. 2).

It was the first Act which was involved in the cases of—

Sweezy v. New Hampshire, 354 U.S. 234.

Uphaus v. Wyman, 360 U.S. 72.

The present statute, enacted in June of 1957, changed the previous authority by striking out reference to investigation of subversive persons, and confined the area of investigation to violations of R.S.A. c. 588.

The 1957 Act was upheld by the New Hampshire Supreme Court in *Wyman v. DeGregory*, 103 N.H. 214; affirmed per curiam by this Court, *DeGregory v. Attorney General of New Hampshire*, 368 U.S. 19, the Chief Justice and Justices Black, Brennan and Douglas dissenting.

It was in 1955 that the then Attorney General first summoned DeGregory. That case too went to the higher Courts on the issue of the scope of a State grant of immunity (*Wyman v. DeGregory*, 101 N.H. 171; appeal dismissed, *DeGregory v. Wyman*, 360 U.S. 717). However, after that decision the Attorney General dropped the petition and filed a completely new proceeding, already referred to, in which this Court passed on the statute involved here (R. 8). The only question there involved was: "Are you presently a member of the Communist Party?" After the decision of this Court, DeGregory purged himself of contempt by answering the question in the negative. Very shortly thereafter the Attorney General again summoned DeGregory, in November, 1963, and so the present case began (R. 8).

II.

PERMISSIBLE BASIS OF A STATE'S INVESTIGATION OF SUBVERSIVE ACTIVITIES.

This whole brief is devoted to showing that appellant has been deprived of due process of law under the Fourteenth Amendment, and of his First and Fourth Amendment rights, as applied to the States by the Fourteenth Amendment.

It is DeGregory's position that an investigation of subversive activities as authorized by the New Hampshire statute cannot legally go forward without some compelling reason being shown. The Attorney General must satisfy the New Hampshire Court—

1. That the legitimate and vital interests of the State warrant the investigation.

2. That a witness summoned for questioning must be shown to have such a connection or nexus with the subject of a legitimate investigation that his questioning is in furtherance of it.

It is DeGregory's contention that appellee has not met either test in this case.

As to the first, the statute authorizes the Attorney General to investigate when he has "information which he deems reasonable and reliable relating to violations" of the Subversive Activities Act (c. 588).

The cases decided in this Court in the past dozen years certainly have settled once and for all the question of whether the investigating body can use merely a subjective standard, or whether, when the matter gets to the Courts, the Courts have a duty to ascertain whether the investigation is constitutionally warranted, and, indeed, whether the investigator is proceeding within his legislative authority.

United States v. Rumely, 345 U.S. 41.

Sweezy v. New Hampshire, 354 U.S. 234.

Watkins v. United States, 354 U.S. 178.

Uphaus v. Wyman, 360 U.S. 72.

Jordan v. Hutcheson, 323 F. 2d 597 (4th Cir.).

The New Hampshire Courts have decided that appellee was acting within the statutory power, and we are therefore left with the question of the constitutionality of the statute as so construed, and as applied to the record herein.

Mapp v. Ohio, 367 U.S. 643, squarely held that "the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth" (p. 655).

We shall not labor the point that an investigation of the nature of that conducted by the Attorney General of New Hampshire infringes on the right of privacy of a witness. There are some circumstances in which the need of the State is so urgent that such an infringement may be upheld. This is not such a case.

In *Watkins v. United States*, 354 U.S. 178, this Court provided pertinent reminder of the First Amendment's applicability to Congressional investigations. At page 197 it was said that an investigation is part of lawmaking. "The First Amendment may be invoked against infringement of the protected freedoms by law or by lawmaking."

First will be considered what was the basis or foundation of the Attorney General's investigation, and what actually he is seeking to investigate.

We find it very hard to determine what the Attorney General is seeking to investigate in this case. When DeGregory stated that he was not even aware of the existence of a Communist Party in New Hampshire since the passage of R.S.A. c. 588, § 8-a, he further said: "I do not understand what I have to face here today" (R. 30).

The only reply of appellee was: "Well, we have some questions to ask you" (R. 30). In the ensuing questioning the only question which was tied down to any date at all was: "Were you a Communist Party member on June 28, 1960?" to which DeGregory replied: "I have already answered that question, Mr. Gall" (R. 31). The further questions were unlimited as to time, but, in view of DeGregory's opening statement (R. 30), they obviously did not deal with any period subsequent to June, 1957, since that period had been fully covered by DeGregory.

Reliance is placed by the New Hampshire Courts solely on the 1955 Report of the Attorney General to the Legislature to justify the Attorney General's investigation. The

Courts held that the report satisfied the statutory requirement of reasonable and reliable information of violations of the Subversive Activities Act (N.H. R.S.A. c. 588). This construction of the Act was held within the power of the State to act and protect its legitimate and vital interests without having been pressed "to a point where it has come into fatal collision with the overriding" protected rights of the defendant. *Uphaus v. Wyman*, 360 U.S. 72, 81.

For several reasons this report is too weak a reed to support the State's action. In the *Uphaus* case, also, the 1955 Report was relied on as the proper constitutional basis of investigation. It should be pointed out that four members of this Court dissented in *Uphaus*, 360 U.S. 72, 82. The opinion of Brennan, J., analyzes in detail the Attorney General's report. *Uphaus v. Wyman*, 360 U.S. 88, 95.

The opinion concludes that the report "discloses an investigation in which the processes of law-making and law-evaluating were submerged entirely in exposure of individual behavior—in adjudication, of a sort, however much disclaimed, through the exposure process." *Uphaus v. Wyman*, p. 101.

At least, however, in the context of the *Uphaus* case, the report was dealing with matters of the fairly recent past, and activities in New Hampshire. There was on the record, decided the majority, a sufficient foundation to warrant the investigation under review, and a sufficient nexus to require the production of World Fellowship lists.

Turn to the instant case. There is a general discussion of world Communism in the early 1950's and before in the report, and descriptive matter on the Communist Party of New Hampshire of the same period and earlier, a treatment of fields such as education and labor, a discussion of certain organizations, and biographical material on certain individuals, of whom appellant is one. There is on pages 204-206 of the report some account of alleged acts and as-

sociations of DeGregory, mostly in the 1930's and 1940's. Only two references were as late as 1953, and they were "mild stuff indeed," which certainly could not be inflated into a showing of a peril to the State (R. 23-26).

Add to that the sworn statement of DeGregory, which actually supplies negative answers to all the questions posed by the Attorney General for the period from June of 1957 to the date of the questioning (1963 and 1964). Can there be any doubt that the investigation was of the distant past with no relation to any current information to warrant the questioning? It is this distinguishing circumstance which most vitally makes this an entirely different case from *Uphaus*, and from the previous *DeGregory* case (*DeGregory v. Attorney General of New Hampshire*, 368 U.S. 19). In the previous *DeGregory* case only one question was in issue: "Are you presently a member of the Communist Party?" At least the Attorney General was seeking information then current, and claiming the right to it on the basis of information in the Attorney General's report, which was less stale by four or five years than it is in the present proceeding. In May, 1964, when the report was accepted as evidence by the Superior Court for Merrimack County, it was nine years old, and most of its contents related to events considerably older.

Strikingly similar are the registration cases under the Internal Security Act of 1950 (*Veterans of the Abraham Lincoln Brigade v. Subversive Activities Control Board*, 380 U.S. 513; *American Committee for Protection of Foreign Born v. Subversive Activities Control Board*, 380 U.S. 503).

In his motion to dismiss the appeal, appellee purported to distinguish those cases on the ground that registration or the denial or granting of a license requires a relation to present activity of the party involved, whereas "one would have to close his eyes to reality to say that com-

munism was a stale subject and could not be investigated without a further showing of proof of its presence on today's political, social and economic scenes." He then went on to mention the Berlin Wall, Cuban missile sites, Vietnam, Alger Hiss, spy trials and hidden microphones in government buildings.

In the Superior Court he did even less. He denied that it was necessary to show a danger to the State before the investigation could proceed (R. 13).

All this argument blithely ignores the pre-emption by the Congress of the field of subversive activities.

Pennsylvania v. Nelson, 350 U.S. 497.

The majority opinion in *Uphaus v. Wyman*, 360 U.S. 72, 76, makes clear that the authority of a State in the area is now limited to the field of sedition against the State itself.

The appellee's references to world events are wholly irrelevant and apparently are designed to obscure the fact that he presented no basis for a State investigation other than the 1955 report already discussed. The nature of the world communist movement cannot be assumed to be a present threat to the State of New Hampshire, particularly when no evidence was offered that there is any communist movement in that State. On page 13 of appellee's motion, a report of January 5, 1965 was referred to. It hardly need be said that this is a misprint for 1955 since no 1965 report was ever referred to in the Record.

Appellee, in his motion, placed considerable reliance on *Gibson v. Florida Legislative Investigating Committee*, 372 U.S. 539, a case in which this Court struck down a State investigation of the NAACP. In that case, Goldberg, J., in the majority opinion said: "it is an essential prerequisite to the validity of an investigation which intrudes into the area of constitutionally protected rights of speech,

press, association and petition that the State convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest" (p. 546).

The Florida Committee relied on *Uphaus v. Wyman*, 360 U.S. 72, *Barenblatt v. United States*, 360 U.S. 109, *Wilkinson v. United States*, 365 U.S. 399, and *Braden v. United States*, 365 U.S. 431. The Court's opinion commented: "In *Barenblatt*, *Wilkinson*, and *Braden*, however, it was a refusal to answer a question or questions concerning the witness' own past or present membership in the Communist Party which supported his conviction" (p. 547).

The opinion went on to speak of the particular nature of the Communist Party as not being an ordinary or legitimate political party.

From this the Attorney General, the appellee herein, would have it that as to such questions the requirement of disclosure of an overriding and compelling State interest and the current nature of the investigation is less strict than in other investigations.

Appellant submits that no such conclusion can be drawn from the cases cited. First of all, *Barenblatt*, *Wilkinson* and *Braden* were all federal investigations, where the interest of the government is not limited by the pre-emption doctrine of *Pennsylvania v. Nelson*, *supra*. Furthermore, in each of these cases the investigating committee was asking for current information, and justified its demand with a showing of foundation or nexus of recent date to the investigation. In such a case this Court could take judicial notice of the force and activities of World Communism.

Contrast the case at bar, in which a State agency, with its power to investigate limited to subjects of compelling State interest, is the interrogator. Take note that DeGregory *did* answer in the negative any membership in, knowledge of, or connection with the Communist Party as

far back as June, 1957. Note also that the investigator offered no showing at all of any Communist activity in New Hampshire more recent than 1954. Where, then, is the "compelling state interest" which alone can justify the abridgement of First Amendment freedoms?

Comments on the State's restricted power to act can be found in a number of recent cases in this Court:

"Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling."

Bates v. Little Rock, 361 U.S. 516, 524.

"The decisions of this Court have consistently held that only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms."

N.A.A.C.P. v. Button, 371 U.S. 415, 438.

The Nexus between DeGregory and the Investigation.

We should mention that the Attorney General also sought to provide foundation or nexus linking DeGregory to the Communist Party by stating that he had in his files sworn testimony of DeGregory's activity in the Communist Party in New Hampshire. He was repeatedly challenged to produce this testimony and to specify to what period it pertained. This he never did, nor did the lower Court order him to do so (R. 10, 11, 14).

Neither the Superior Court nor the Supreme Court of New Hampshire purported to rest its decision on this statement of the Attorney General of unknown witnesses at an unknown period, but solely on the 1955 report (R. 14, 36).

In these circumstances this statement of the Attorney General can and should be ignored. Certainly it does not contribute to any convincing showing of nexus or foundation for determining the validity of the questioning of DeGregory.

We have already shown what the 1955 report has to say of DeGregory. We submit that it supplies no such foundation as to warrant the summoning of DeGregory, even if a showing had been made to justify any current investigation of subversive activities.

Investigation of the Past.

The Attorney General seeks to justify his inquiry into long-past events by citing *Nelson v. Wyman*, 99 N.H. 33, and *Communist Party of the United States v. Subversive Activities Control Board*, 367 U.S. 1. However, both those cases held only that, where current events or the current character of the Communist Party was in issue, past events and conduct were pertinent as ancillary to and having a bearing on the present. Neither case purported to say that an inquiry devoted entirely to long-past events would be constitutionally valid.

Already cited in this brief are *American Committee for Protection of Foreign Born v. Subversive Activities Control Board*, 380 U.S. 503, and *Veterans of the Abraham Lincoln Brigade v. Subversive Activities Control Board*, 380 U.S. 513. In both of these cases it was the staleness of the record which caused this Court to reverse registration orders. We have already dealt with appellee's attempt to modernize this record by reference to world events occurring after 1954, and the reasons why such reference is not here permissible. Failing that, we are left with a record of noteworthy staleness, an investigation not of the present but the long ago, and no tie to the present whatever.

Conclusion.

We submit that this case is an outstanding example of an attempted abuse of a limited State power, of an unconstitutional denial of due process of law and First and Fourth Amendment rights. There has been no showing of a compelling State need which would justify this investigation, no adequate laying of a foundation for pursuing it, and no showing of the other kind of nexus or foundation which would link DeGregory with a subject of valid investigation.

For the several reasons stated, appellant requests reversal of the decision of the Court below, and a dismissal of the contempt proceeding against him.

Respectfully submitted,

HOWARD S. WHITESIDE,

Attorney for HUGO DeGREGORY,

Appellant.

[Appendix follows.]

Appendix.**UNITED STATES CONSTITUTION.***Amendment 1.*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

[Digest References: Constitutional Law, §§ 925-941.]

Amendment 4.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[Digest References: Search and Seizure, §§ 1-16.]

Amendment 14, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

NEW HAMPSHIRE REVISED STATUTES ANNOTATED.**CHAPTER 491.**

Section 19. PETITION. Whenever any official or board is given the power to summon witnesses and take testimony,

but has not the power to punish for contempt, and any witness refuses to obey such summons either as to his appearance or as to the production of things specified in the summons, or refuses to testify or to answer any questions, a petition for an order to compel him to testify or his compliance with the summons may be filed in the Superior Court or with some justice thereof.

Section 20. PROCEDURE. Upon such petition the Court or justice shall have authority to proceed in the matter as though the original proceeding had been in the court and may make orders and impose penalties accordingly.

CHAPTER 588.

SUBVERSIVE ACTIVITIES.

588:1 DEFINITIONS. For the purpose of this chapter "organization" means an organization, corporation, company, partnership, association, trust, foundation, fund, club, society, committee, political party, or any group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

"Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of government of the United States, or of the state of New Hampshire, or of any political subdivision of either of them, by force, or violence.

"Foreign subversive organization" means any organization directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is

to engage in or to advocate, abet, advise, or teach, activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of government of, the United States, or of the state of New Hampshire, or of any political subdivision of either of them, and to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual; but does not and shall not be construed to mean an organization the *bona fide* purpose of which is to promote world peace by alliances of unions with other governments or world federations, unions or governments to be effected through constitutional means.

“Foreign government” means the government of any country or nation other than the government of the United States of America or one of the states thereof.

“Subversive person” means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches, by any means any person to commit, attempt to commit or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence, or who is a member of a subversive organization or a foreign subversive organization.

SEDITION.

588:2 FELONIES. It shall be a felony for any person knowingly and wilfully to

(a) commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy, or alter,

or to assist in the overthrow, destruction or alteration of the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force or violence; or

(b) advocate, abet, advise or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of the state of New Hampshire or of any political subdivision of either of them; or

(c) conspire with one or more persons to commit any such act; or

(d) assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization; or

(e) destroy any books, records or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing said organization to be such.

Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of this section shall be fined not more than twenty thousand dollars, or imprisoned for not more than twenty years, or both, at the discretion of the court.

588:3 PENALTY. It shall be a felony for any person after August 1, 1951 to become, or after November 1, 1951 to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization. Any person who shall be convicted by a court of competent jurisdiction of violating this section shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both, at the discretion of the court.

588:3-a EVIDENCE OF MEMBERSHIP OR PARTICIPATION. In determining membership or participation in a subversive organization or a foreign subversive organization as defined in this chapter, or knowledge of the purpose or objective of such organization, the jury, under instructions from the court, may consider evidence, if presented, as to whether the accused person to his knowledge:

- (1) Has been listed as a member in any book or any of the lists, records, correspondence, or any other document of the organization;
- (2) Has made financial contribution to the organization in dues, assessments, loans, or in any other form;
- (3) Has made himself subject to the discipline of the organization in any form whatsoever;
- (4) Has executed orders, plans, or directives of any kind of the organization;
- (5) Has acted as an agent, courier, messenger, correspondent, organizer, or in any other capacity in behalf of the organization;
- (6) Has conferred with officers or other members of the organization in behalf of any plan or enterprise of the organization;
- (7) Has been accepted as an officer or member of the organization or as one to be called upon for services by other officers or members of the organization;
- (8) Has written, spoken or in any other way communicated by signal, semaphore, sign or in any other form of communication orders, directives, or plan of the organization;
- (9) Has prepared documents, pamphlets, leaflets, books or any other type of publication in behalf of the objectives and purposes of the organization;
- (10) Has mailed, shipped, circulated, distributed, delivered, or in any other way sent or delivered to others

materials or propaganda of any kind in behalf of the organization;

- (11) Has advised, counseled or in any other way imparted information, suggestions, recommendations to officers or members of the organization or to anyone else in behalf of the objectives of the organization;
- (12) Has indicated by word, action, conduct, writing or in any other way a willingness to carry out in any manner and to any degree the plans, designs, objectives, or purposes of the organization;
- (13) Has in any other way participated in the activities, planning, actions, objectives, or purposes of the organization;
- (14) The enumeration of the above subjects of evidence on membership or participation in a subversive organization or a foreign subversive organization as above defined, shall not limit the inquiry into and consideration of any other subject of evidence on membership and participation as herein stated.

588:3-b CONSTRUCTION OF PROVISION. Nothing in the preceding section shall be construed to limit the supervisory power of the court over the admission and exclusion of evidence or over the sufficiency of the evidence as a whole.

588:4 BARRED FROM OFFICE. Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of sections 2 and 3 of this chapter, in addition to all other penalties therein provided, shall from the date of such conviction be barred from:

(a) holding any office, elective or appointive, or any other position of profit or trust in or employment by the government of the state of New Hampshire or of any agency thereof or of any county, municipal corporation or other political subdivision of said state;

(b) filing or standing for election to any public office in the state of New Hampshire.

588:5 **DISSOLUTION OF ORGANIZATIONS.** It shall be unlawful for any subversive organization or foreign subversive organization to exist or function in the state of New Hampshire and any organization which by a court of competent jurisdiction is found to have violated the provisions of this section shall be dissolved, and if it be a corporation organized and existing under the laws of the state of New Hampshire, a finding by a court of competent jurisdiction that it has violated the provisions of this section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited, and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this section shall be seized by and for the state of New Hampshire, the funds to be deposited in the state treasury and the books, records, files and other property to be turned over to the attorney general of New Hampshire.

588:6 **ASSISTANCE FURNISHED.** For the collection of any evidence and information referred to in this chapter, the attorney general is hereby directed to call upon the superintendent of the state police, and county and municipal police authorities of the state to furnish him such assistance as may from time to time be required. Such police authorities are directed to furnish information and assistance as may be from time to time so requested. The attorney general may testify before any grand jury as to matters referred to in this chapter as to which he may have information.

588:7 **RECORD.** The attorney general shall maintain complete records of all information received by him and all matters handled by him under the requirements of this chapter. Such records as may reflect on the loyalty of any resident of this state shall not be made public nor divulged

to any person except with the permission of the attorney general to effectuate the purposes thereof.

588:8 GRAND JURY INQUIRIES. The superior court, when in its discretion it appears appropriate, or when informed by the attorney general that there is information or evidence of the character described in section 2 of this chapter to be considered by the grand jury, shall charge the grand jury to inquire into violations of this chapter for the purpose of proper action.

588:8-a ATTORNEY GENERAL. At any time when the attorney general has information which he deems reasonable or reliable relating to violations of the provisions of this chapter he shall make full and complete investigation thereof and shall report to the general court the results of this investigation, together with his recommendations, if any, for legislation. In any investigation hereunder the attorney general or any duly authorized member of his staff is authorized to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers and documents and to administer such oaths, and to take such testimony and to make such expenditures within the funds provided as he deems advisable. The provisions of section 7 of this chapter shall be inapplicable to the investigation provided for herein and the attorney general is hereby authorized to make public such information received by him, testimony given before him, and matters handled by him as he deems fit to effectuate the purposes hereof.

LOYALTY.

588:9 EMPLOYMENT. No subversive person, as defined in this chapter, shall be eligible for employment in, or appointment to any office, or any position of trust or profit in the government of, or in the administration of the busi-

ness of this state, or of any county, municipality, or other political subdivision, of this state.

588:10 WRITTEN STATEMENTS REQUIRED. Every person and every board, commission, council, department, court or other agency of the state of New Hampshire, or any political subdivision thereof, who or which appoints or employs or supervises in any manner the appointment or employment of public officials or employees shall establish by rules, regulations or otherwise, procedures designed to ascertain before any person, including teachers, and other employees of any public educational institution in this state, is appointed or employed, that he or she as the case may be, is not a subversive person, and that there are no reasonable grounds to believe such persons are subversive persons. In the event such reasonable grounds exist, he or she as the case may be, shall not be appointed or employed. In securing any facts necessary to ascertain the information herein required, the applicant shall be required to sign a written statement containing answers to such inquiries as may be material, which statement shall contain notice that it is subject to the penalties of perjury.

588:11 EXCEPTIONS. The inquiries prescribed in section 10 other than the written statement to be executed by an applicant for employment, shall not be required as a prerequisite to the employment of any persons in the classification of laborers in any case in which the employing authority shall in his or its discretion determine and by rule or regulation specify the reasons why, the nature of the work to be performed is such that employment of persons as to whom there may be reasonable grounds to believe that they are subversive persons as defined in this chapter will not be dangerous to the health of the citizens or the security of the government of the United States, the state of New Hampshire or any political subdivision thereof.

588:12 **PRESENT EMPLOYEES.** Every person, who on August 1, 1951 shall be in the employ of the state of New Hampshire or of any political subdivision thereof, other than those now holding elective office shall be required on or before October 1, 1951 to make a written statement which shall contain notice that it is subject to the penalties of perjury, that he or she is not a subversive person as defined in this chapter, namely, any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization, as more fully defined in this chapter. Such statement shall be prepared and execution required by every person and every board, commission, council, department, court, or other agency of the State of New Hampshire or any political subdivision thereof responsible for the supervision of employees under its jurisdiction. Any such person failing or refusing to execute such a statement or who admits he is a subversive person as defined in this chapter shall immediately be discharged.

588:13 **DISCHARGE OF PERSONNEL; HEARING.** Reasonable grounds on all the evidence to believe that any person is a subversive person, as defined in this chapter shall be cause for discharge from any appointive office or other position of profit or trust in the government of or in the administration of the business of this state, or of any county, municipality or other political subdivision of this state, or any agency thereof. The personnel commission shall, by appropriate rules or regulations, prescribe that

persons charged with being subversive persons, as defined in this chapter, shall be accorded notice and opportunity to be heard, in accordance with the procedures prescribed by law for discharges for other reasons. Every person and every board, commission, council, department, or other agency of the state of New Hampshire or any political subdivision thereof having responsibility for the appointment, employment or supervision of public employees not covered by the state classified service shall establish rules or procedures similar to those required herein for classified services for a hearing for any person charged with being a subversive person, as defined in this chapter after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of this chapter shall promptly report to the attorney general the fact of and the circumstances surrounding such discharge. A person discharged under the provisions of this section shall have the right within thirty days thereafter to appeal to the superior court of the county where such person may reside for a determination by such court (with the aid of a jury if the appellant so elects) as to whether or not the discharge appealed from was justified under the provisions of this act. The court shall speedily hear and determine such appeals, and from the judgment of the court, there shall be a further appeal to the supreme court of New Hampshire as in civil cases.

588:14 DECLARATIONS OF CANDIDATES. No person shall become a candidate for election to, nor qualify for, any public office under the election laws of this state unless he or she shall file with the declaration of candidacy, or prior to qualifying, an affidavit that he or she is not a subversive person as defined in this chapter. No declaration of candidacy shall be received for filing by any town or city clerk or by the secretary of state unless accompanied by the affidavit aforesaid and there shall not be entered upon

any ballot or voting machine at any election the name of the person who has failed or refused to make the affidavits aforesaid.

588:15 FALSE STATEMENTS. Every written statement made pursuant to this chapter by an applicant for appointment or employment, or by any employee shall be deemed to have been made under oath if it contains a declaration preceding the signature of the maker to the effect that it is made under the penalties of perjury. Any person who makes a material misstatement of fact (a) in any such written statement, or (b) in any affidavit made pursuant to the provisions of this chapter, or (c) under oath in any hearing conducted by any agency of the state, or of any of its political subdivisions, pursuant to this chapter, or (d) in any written statement by an applicant for appointment or employment or by an employee in any state aid institution of learning in this state, intended to determine whether or not such applicant or employee is a subversive person as defined in this chapter, which statement contains notice that it is subject to the penalties of perjury shall be subject to the penalties of perjury prescribed in chapter 587, RSA.

588:16 TITLE. This chapter may be cited as the "Subversive Activities Act of 1951."